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DEC 13 2010

OFFICE OF PETITIONS

In re Patent No. 7,782,940

Issued: August 24, 2010

Application No. 10/633,137

Filing or 371(c) Date: August 1, 2003

Dkt. No.: AH-UTSC: 199-0201US

: DECISION ON APPLICATION FOR

: PATENT TERM ADJUSTMENT

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This is a decision on the application for patent term adjustment under 37 CFR 1.705(d) filed on September 13, 2010 requesting an increase in patent term adjustment from 1876 days to 1907 days.

The petition for reconsideration of the patent term adjustment of 1876 days is **DISMISSED**.

The above-identified application matured into U.S. Patent No. 7,782,940 on August 24, 2010. The patent issued with a patent term adjustment of 1876 days. The instant application for patent term adjustment was timely filed September 13, 2010. Patentees contest the adjustment accorded the patent pursuant to 37 CFR 1.703(b).

Patentees assert entitlement to 1,222 days pursuant to 37 CFR 1.702(a).

Patentees assert entitlement to 747 days pursuant to 37 CFR 1.702(b).

Patentees assert an applicant delay of 62 days.

37 CFR 1.702(a)(1)

Pursuant to 37 CFR 1.702(a)(1), the patent is entitled to an adjustment of 931 days. The adjustment commenced October 2, 2004 and ended April 20, 2007. See, 37 CFR 1.703(a)(1).

37 CFR 1.702(a)(2)

The patent is not entitled to 291 days of adjustment as asserted by patentees. A notice of appeal was filed March 2, 2009. Non-compliant appeal briefs were filed May 4, 2009, July 13, 2009, and October 21, 2009. A compliant appeal brief was filed March 23, 2010. The Notice of Allowance was mailed June 22, 2010, which is within four months of the filing date of the filing of the compliant brief on March 23, 2010. Accordingly, the patent is not entitled to adjustment pursuant to 37 CFR 1.702(a)(2). See, 37 CFR 1.703(a)(4).

37 CFR 1.702(b)

The period of adjustment pursuant to 37 CFR 1.702(b) commenced August 2, 2006 and ended August 24, 2010 and totals 1,484 days. However, the period of adjustment pursuant to 37 CFR 1.702(b) does not include the period of time accrued during appeal.

37 CFR 1.703(b)(4) states:

“The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods: (4) The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.”

A Notice of Appeal was filed March 2, 2009. A Notice of Allowance was mailed in response thereto on June 22, 2010. As a result of the filing of the Notice of Appeal on March 2, 2009, the three year delay period does not include the appeal period as prescribed by 37 CFR 1.703(b)(4). As the appeal did not result in a decision by the Board, but in the mailing of a Notice of Allowance, the three year period does not include the period of time from the Notice of Appeal to the mailing of the Notice of Allowance, or 478 days.

As patentees have not been granted any relief, no adjustment to the patent term will be made.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

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